

## **REMARKS**

Claims 1-13 and 25-36 remain pending in the present application. Applicant has amended Claims 25, 35 and 36. Applicant thanks the Examiner for reconsidering the impropriety of the previous substantive office action and examining the application again. However, the Examiner has again issued an office action which appears to be missing various elements of the claimed invention.

### **I. 35 U.S.C. § 102 Rejection of Claims**

The Examiner has rejected Claims 35-36 under 35 U.S.C. § 102(b) as being anticipated by Sano *et al.* Applicant's Attorney respectfully traverses these grounds of rejection.

Applicant has amended Claim 35 to recite that bats of various diameter may be utilized with the fixture of the claim at issue. Although each bat utilized may have a different diameter, the claim further requires the center point of any of those bats is located at a pre-selected longitudinal and latitudinal position by the automatic leveling fixture. Claim 35 also requires that bats of varying diameter each have an equilateral cross-section and always be positioned at the same longitudinal and latitudinal positions. However, since the Examiner's alleged base plate (41a) does not slide relative to the base, these limitations are not possible with the Sano *et al.* reference.

With regard to Claim 36, the Examiner again alleges that each element of the claim is taught by Sano *et al.* Specifically, the Examiner alleges that Sano *et al.* teaches a base (41), at least one jaw (42), wherein the jaws (42) are slidable relative to the base. However, the Examiner alleges element (41a) to be a base plate. However, the base plate is not slidable

relative to the base as claimed in Claim 36. The Examiner is also referred to Figures 7, 17A and 17B which indicate that element (41) does not include a slidable base plate portion. Applicant respectfully requests this ground of rejection withdrawn.

## **II. 35 U.S.C. § 103 Rejections**

The Examiner has rejected Claims 1-13 and 25-34 under 35 U.S.C. § 103(a) as being unpatentable over Sano *et al.* in further view of Comulada *et al.* Applicant respectfully traverses this ground of rejection.

The Examiner alleges that Sano *et al.* teaches, as referred to in the previous rejection, guide claws (42) corresponding to the claimed jaws, a guide body (41) corresponding to the base, with a replacement groove (41a) corresponding to the base plate. The Examiner further states that the tube guide or two guide claws are adjustable by means of the spring to accommodate tubes of different diameters.

The Examiner's rejection is improper since Sano *et al.* fails to teach all of the elements of the claimed invention. With respect to Claim 1, a base plate is claimed to be slidable relative to the base at line 4. The Examiner refers to element (41a) as a base plate. As shown in Figure 7 of Sano *et al.*, however, element (41a) is not slidable relative to the base element 41. The Examiner is also referred to Figures 17A and 17B which indicate that element (41) does not include a slidable base plate portion. Thus, the Sano *et al.* reference fails to teach all of the elements of the claimed invention.

The Examiner has also rejected Claim 25 and its depending Claims 26-31 as being obvious over Sano *et al.* and further in view of Comulada *et al.* Again, the Examiner alleges that Sano *et al.* teaches all of the elements of the claimed invention except for the laser machining.

However, the Examiner's allegation is incorrect as Sano *et al.* fails to teach all of the elements alleged by the Examiner. Claim 25 requires first and second jaws, each having an inwardly directed base plate camming surface for directing said base plate a pre-selected distance in relation to movement of said jaw. The Sano *et al.* reference, as previously described, fails to teach or suggest a base plate camming surface for directing the base plate a pre-selected distance in relation to movement of the jaws. Instead, the Sano *et al.* reference teaches a base plate, element (41a) as alleged by the Examiner, which is stationary and does not move relative to the jaws (42) or the base (41). The Examiner is again directed to Figures 7, 17A and 17B which indicate that element 41 does not include a slidable base plate portion. Accordingly, the Examiner's allegation that Sano *et al.* teaches the alleged elements of the instant claim is incorrect.

As described in the previous office action response, Comulada *et al.* teaches a device which levels a material relative to a horizontal plane. Although, the reference discusses laser machining, the leveling discussed differs from that described in the instant invention and therefore is asserted to be non-analogous art. Moreover, Comulada fails to aid with teaching or suggestion of the missing elements described previously.

Next, the Examiner alleges that Sano *et al.* teaches all of the elements of Claims 32-35 except for the use of laser machining. Applicant respectfully traverses these grounds of rejection.

With respect to Claim 32, the claim requires at least one plate moving relative to movement of the at least one jaw. The Examiner has alleged that element 41a is a plate. However, such a plate (41a) fails to move relative to the movement of at least one jaw. Further,

the claim requires that the fixture retains bats of varying diameter at equal elevations regardless of the bat diameter. Such limitation is not taught or suggested in the Sano *et al.* reference, since the alleged base plate (41a) does not move.

Regarding Claim 35, the base plate is claimed to be slidable through a vertical plane, a distance relative to said sliding of said at least one jaw. As previously described throughout, the Examiner recites the element (41a) as corresponding to the base plate. However, the alleged base plate (41a) of Sano *et al.* fails to move through a vertical distance and relative to the alleged jaws (42).

The Examiner further alleges that Sano *et al.* teaches all of the elements of Claim 34 except for the use of the laser machining. Claim 34 recites, and therefore requires, the first and second jaw slidably receive the bat and cause the base plate to modify the vertical position of the bat to maintain an equal distance of the bat to said marking device regardless of the diameter of the bat. In other words, the base plate is movable relative to the first and second jaw. To the contrary, Sano *et al.*, specifically Figure 7, depicts an element (41a) alleged to correspond to the base plate. The alleged element (41a) is not movable in a vertical plane or relative to the movement of the alleged jaws (42). See also Figures 17A and 17B. Accordingly, Sano *et al.* fails to teach all of the elements alleged by the Examiner.

With respect to Comulada *et al.*, the reference described laser ablation of the substrate. However, Comulada *et al.* fails to teach or suggest the missing elements not taught by Sano *et al.* Accordingly, Applicant respectfully requests this ground of rejection withdrawn.

The Examiner has rejected Claims 1-13 and 25-34 under 35 U.S.C. § 103(a) as being unpatentable over Sano *et al.* and further in view of Comulada *et al.* and Baum.

Sano *et al.* fails to teach or suggest all of the elements alleged by the Examiner. With regard to Claim 1, and as previously described, Sano *et al.* fails to teach a base plate being slidable relative to the base and at least one jaw having a base plate camming surface engaging the base plate causing the at least one jaw to move a pre-selected distance relative to the distance moved by the base plate. Likewise, and with respect to Claim 25, Sano *et al.* fails to teach a base plate slidably positioned in a base or first and second jaws having inwardly directed base plate camming surfaces for directing the base plate a pre-selected distance in relation to movement of the jaws. With respect to Claim 32, Sano *et al.* fails to teach at least one plate moving relative to the movement of the at least one jaw. With regard to Claim 33, Sano *et al.* fails to teach a base plate slidable through a vertical plane, a distance relative to the sliding of the at least one jaw. With respect to Claim 34, Sano *et al.* fails to teach first and second jaws which cause the base plate to modify the vertical position of the bat. Likewise, and with regard to Claim 36, Sano *et al.* fails to teach opposed jaws having a base plate camming surface engaging the base plate causing the jaws to move a pre-selected distance relative to the distance moved by the base plate. Thus, Sano *et al.* fails to teach all of the elements alleged to be taught by the Examiner. Further, Comulada *et al.* and Baum both fail to modify the teachings of Sano *et al.* in a way to teach the elements missing from the Examiner's cited rejection. For these reasons, the Examiner is respectfully requested to withdraw this ground of rejection and expedite this case to issuance.

## **CONCLUSION**

Applicant attorney believes that the instant application is now in condition for allowance and therefore respectfully requests that the Examiner allow the pending claims. However, if the

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Examiner believes there are other unresolved issues in this case, Applicant's attorney would appreciate the courtesy of a telephone call at (502) 584-1135 to discuss such remaining issues.

Respectfully submitted,

**MIDDLETON REUTLINGER**

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